

APPMAIL LIMITED

TERMS AND CONDITIONS (Business to Business)

These terms and conditions apply to the automated electronic mail delivery service ('Service') that Appmail Limited ("we") will provide to you and any Other Account Users you add to your Account through our website www.appmail.co.uk ('our site'). By clicking "I agree" you agree to be bound by these terms and conditions and **in particular the limitation of liability set out in condition 10** which shall also govern any Services provided to your Other Account Users. Please understand that if you refuse to agree or accept these terms and conditions you will not be able to request or order any Services from our site.

1. Definitions and interpretation

1.1 In these terms and conditions (except where the context otherwise requires) the following words and phrases have the following meanings:

"Account" means the account against which we have received payments from you, and through which you pay for the Service;

"Confidential Information" means all information of whatsoever nature contained in the Software and all Mail received from you;

"Fee" means the current applicable rate as set out on our website at <http://appmail.co.uk>, except in cases of obvious error, and/or notified to you by us from time to time;

"Licence" means the licence to use the Software granted to you under condition 5;

"Mail" means all correspondence received by us from you through the use of the Software for the purposes of the Service;

"Mail Content" means the content of any Mail;

"Other Account User" means any others that you add to your Account;

"Registration Information" means the information necessary to open an Account for you (including updates to such information) and which consists of your name, address, e-mail address, telephone number, the number of letters you send per month, and, where relevant, your company name, the industry you work in and the number of employees working for your company;

"RMIMC" means the Royal Mail Inward Mail Centre;

"Service" means printing, enclosing, application of the Indicia, sorting, and delivering Mail on your behalf to RMIMC, for onward delivery to the addressee by Royal Mail, in accordance with these terms and conditions;

"Software" means Appmail.co.uk's software (including the Appmail.co.uk Web Portal, the Appmail Core Application and the Appmail Spooler Service and any other such software as may be provided from time to time) used to provide the Service;

"Support Services" means the services set out in condition 6;

"Appmail Core Application" means the software used, owned or operated by Appmail that processes data submitted by the Appmail Web Portal in order to deliver the Services

"Indicia" means the logo applied to the Mail in accordance with Royal Mail regulations;

“Appmail Spooler Service” means the application that is installed to allow pdf documents to be spooled to the Viapost Core Application;

“Appmail Web Portal” means the Viapost website which enables you to manage their accounts and send letters without the need to install anything on your personal computer];

“We” means Appmail Limited. We are registered in England and Wales under Company Number xxxxxx and our registered office [and main trading address] is xxxxxxxxxxxx. Our VAT number is xxxxxxxxxxxxxx

“Working Hours” means 9am to 5pm UK time Monday to Friday excluding bank and public holidays in the UK.

“You/your” means the person, organisation or company who enters into a contract for the provision of Service, subject to these terms and conditions.

2 SERVICES

- 2.1 On your acceptance of these terms and conditions and when you have provided complete Registration Information we will:
 - 2.1.1 open an Account for you to allow you to use the Service; and
 - 2.1.2 make the Software available to you
- 2.2 Once the Software has been installed ready for your use we will provide the Service to you following receipt of a request from you through the Software for us to provide the Service. Your request constitutes an offer to us to provide the Service. The contract between us (‘Contract’) will only be formed when we accept your Mail for processing. The provision of the Service to each piece of your Mail shall constitute an individual and separate Contract between us. All Contracts between us will be governed by these terms and conditions.
- 2.3 Unless we agree otherwise we will provide the Services on normal working days and start work no earlier than 9am and finish work no later than 5pm. A normal working day for us means Mondays to Fridays, excluding any bank or other national holidays. If we receive a request for Services from you on a day which is not a working day, we will treat this as a request you have made on the next working day.
- 2.4 We will use our reasonable endeavours to ensure that we deliver Mail for which there is a finalised Contract between us to RMIMC for onward delivery to the addressee by Royal Mail the day following its receipt by us where the Mail is received by midday (12pm), but we cannot guarantee the Mail will reach the addressee on any particular date. Time will not be of the essence in respect of the delivery dates for your Mail. We cannot be responsible for any delays in or failure to perform our obligations if that delay or failure is caused by Royal Mail.
- 2.5 We will not accept for postage any Mail the carriage of which is prohibited by any law, rule or regulation of any country in which the Mail travels or where you are in breach of these terms and conditions.
- 2.6 Your Mail will be printed on a minimum of A4 90gsm paper.
- 2.7 We can only accept a maximum of 8 pages for insertion into a standard C5 envelope. If any of your Mail exceeds this requirement, your Mail will not be processed
- 2.8 In the event that we are unable to deliver any Mail due to you providing us with an incorrect recipient address, or in the event that Royal Mail is unable to effect delivery for any reason, the relevant Mail will be returned to us and:

- 2.8.1 if you have subscribed to our post return service we will forward the Mail to you at the address which you have provided us with; and
- 2.8.2 if you have not subscribed to our post return service or if you have provided us with an incorrect address, we will destroy the Mail.

3 PAYMENT AND PAYMENT TERMS

- 3.1 You may credit your Account by selecting from the range of payment options available to you.
- 3.2 Payment will be due and payable by you through your Account prior to postage of your Mail. We will deduct the relevant Fee from your Account immediately following a request by you for the Services and prior to carrying out those Services.
- 3.3 We may increase the Fees from time to time and if we do so we will notify you of the changes by email but any changes will not affect any requests still to be processed which are received prior to such notification.
- 3.4 All fees stated are exclusive of VAT which will be charged in addition at the rate in force at the time you make your request.
- 3.5 All Fees and payment methods are as set out on our site and it is always possible that, despite our best efforts, some of those Fees may be stated incorrectly. We are under no obligation to provide a Service to you at an incorrect (lower) Fee, if the pricing error is obvious and unmistakeable and could have reasonably been recognised by you as a mispricing.

4 YOUR RESPONSIBILITIES AND WARRANTIES

- 4.1 You will:
- 4.1.1 provide true, accurate and complete Registration Information;
 - 4.1.2 keep your Registration Information up to date;
 - 4.1.3 provide us with a correct and operational email address, and notify us promptly of any changes or cancellations of any and all e-mail addresses you provide us; and
 - 4.1.4 be responsible for ensuring that each item of Mail bears a complete and accurate address, including a post code.
 - 4.1.5 be responsible for verifying the appearance of the Mail and its print quality via the preview that our system will generate during the execution of the Services. Your acceptance of the preview will be conclusive evidence of your acceptance of the appearance and print quality of your Mail.
 - 4.1.6 be responsible for ensuring that for all use of the Services with an individual or cumulative Fee in excess of £100 you shall verify the print quality of the Mail by means of making, receiving and verifying a test print from us.
- 4.2 You will not:
- 4.2.1 impersonate any other person or use a name that you are not authorised to use;
 - 4.2.2 use the Service for any unlawful or fraudulent activity; or
 - 4.2.3 reveal your Account password to anyone else or use anyone else's password.
- 4.3 You warrant that:
- 4.3.1 your Mail does not contain anything defamatory, offensive, indecent or threatening or otherwise prohibited by any law, rule or regulation; and
 - 4.3.2 you have access to the internet and to a current functional e-mail address. Although we will take reasonable steps to contact you based on information that you have provided us, we will

not be liable for any undelivered e-mail or any costs you incur for maintaining internet access and an e-mail account.

- 4.4 You agree to indemnify us against any costs which we may incur in connection with condition 2.8, including but not limited to the cost of forwarding any undelivered Mail to you and/or disposing of any undelivered Mail.
- 4.5 You agree to indemnify and hold us and (as applicable) our affiliates, officers, directors, agents and employees, harmless from, all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including reasonable legal fees) awarded against, or incurred or paid by us and (as applicable) our affiliates, officers, directors, agents and employees as a result of or in connection with any claim or demand made by any third party due to or arising out of your breach of these terms and conditions.
- 4.6 You shall not for a period of one calendar year following the date of this agreement, be involved directly or indirectly in the development, manufacture or sale of any Services which compete with the Services and shall not act as agent, representative, franchisee or distributor for or otherwise be directly or indirectly concerned or interested in the development, manufacture, delivery or supply of any products, goods (including software or other computer programme or device) or services that are similar in description, design or function to the Services. This restriction applies to you, whether on your own behalf or on behalf of any other person, firm or company whatsoever. The provisions of this condition 4.6 shall survive termination or expiration howsoever occasioned

5 LICENCE

- 5.1 We grant to you a non-exclusive, non-transferable licence to use the Software in accordance with these terms and conditions (the "Licence").
- 5.2 Except as expressly set out in these terms and conditions, by our express permission, or to the extent permitted by statute, you undertake:
 - 5.2.1 not to reproduce, vary, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Software or create derivative works based on the whole of or any part of the Software or incorporate the Software into any other software program not provided by us; and
 - 5.2.2 not to rent, lease, sub-license, loan, sell assign, pledge, transfer or otherwise dispose of the Software whether on a temporary or permanent basis;
- 5.3 You acknowledge that the Software may not be free of bugs or errors and agree that the existence of minor errors shall not constitute a breach of these terms and conditions.

6 SUPPORT SERVICES

- 6.1 For all customers, we provide an on-line self-help service, available at our site
- 6.2 For account managed customers (who we, in our absolute discretion select), we will provide the following Support Services during Working Hours via telephone, email or facsimile, as appropriate:
 - 6.2.1 a telephone helpdesk facility, including advice and assistance on issues relating to the configuration of the Software;
 - 6.2.2 where there is a demonstrable fault in the Software which is capable of replication by us, we will provide advice and assistance on its correction; and
 - 6.2.3 provision of workarounds, patches or other maintenance releases not providing any new functionality issued for the Software.

6.3 We will not provide any Support Services:

6.3.1 where faults result from or are connected with any improper use, operation or neglect of the Software, your failure to implement recommendations in respect of or solutions to faults previously advised by us, and/or any repair, adjustment, alteration or modification of the Software by any person other than us or our authorised agents without our consent;

6.3.2 where faults result from the use of the Software in combination with other software, hardware, or other parts of your technical infrastructure not licensed under these terms and conditions; or

6.3.3 in respect of an unsupported version of the Software, being a version other than the most recent version of the Software delivered to you following acceptance of these terms and conditions or made available to you under condition 7.

7 UPGRADES

7.1 From time to time, we may make available upgrades, new versions or other revisions or amendments to the Software, which provide additional features or change the functionality of the Software and we may make these available to you.

7.2 Any upgrades provided to you will form part of the Software and be subject to these terms and conditions.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 You acknowledge that we own, or are licensed to use, all copyright and other intellectual property rights in and relating to the Software and that you have no rights in, or to, the Software other than the right to use it in accordance with these terms and conditions.

8.2 We warrant that the use of the Software in accordance with these terms and conditions will not infringe the copyright belonging to any third party.

8.3 Subject to condition 8.4, if any claim is brought against you that the normal use or possession of the Software in accordance with these terms and conditions infringes the copyright of a third party, we hereby indemnify you and will keep you indemnified against any damages that are awarded and are paid to any such third party in respect of a claim and any losses, costs (including all legal fees) and expenses incurred by or on behalf of you provided that you:

8.3.1 as soon as reasonably practicable notify us in writing of any such claim of which you become aware;

8.3.2 do not make any admission of liability or compromise or agree any settlement of any claim without our prior written consent, which consent will not be unreasonably withheld or delayed, or otherwise prejudice our or any third party's defence of any claim;

8.3.3 give us, or such person as we direct, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from any claim; and

8.3.4 upon payment of your reasonable costs, give us and such other third parties as we direct all reasonable assistance with the conduct or settlement of any such negotiations or litigation.

8.4 If any third party claims that your use of the Software in accordance with these terms and conditions infringes any third party's copyright, we may in our absolute discretion and at our own expense:

8.4.1 procure the right for you to continue using the Software in accordance with these terms and conditions;

8.4.2 make such alterations, modifications or adjustments to the Software so that they become non-infringing; or

8.4.3 replace the Software with non-infringing software.

- 8.5 Subject to conditions 8.3 and 8.4, our liability for infringement of third-party intellectual property rights shall be limited to breaches of rights subsisting in the UK.
- 8.6 If there is any claim attributable to the use or possession by you of the Software other than in accordance with these terms and conditions, conditions 8.2 to 8.4 will not apply and you will indemnify us against all liabilities, costs and expenses that we may incur as a result of such claim.

9 DATA PROTECTION

- 9.1 Appmail Limited is the data controller of any personal information that you submit to us (including but not limited to your Registration Information and any information contained in any Mail). We are committed to protecting your privacy and maintaining the security of any personal information received from you.
- 9.2 By submitting your personal information, you consent to our use of the information as set out in these terms and conditions.
- 9.3 We will use your information to administer your Account, process payments made under these terms and conditions, provide the Service, and analyse your use of the Service.
- 9.4 We may from time to time contact you by post, telephone, or email to notify you about changes to this website and the Service and provide other information that may be of interest to you. We will give you an opportunity to choose not to receive our marketing information before you submit your personal information. You can tell us to stop sending you marketing information at any time by contacting jo@appmail.co.uk.
- 9.5 We may share your information with trusted third parties who may contact you from time to time by post, telephone, or email to inform you about products and/or services that may be of interest to you. We will give you an opportunity to choose not to share your information in this way before you submit your personal information.
- 9.6 We may disclose your information to any buyer or potential buyer of the business of ViaPost Limited.
- 9.7 We may disclose your information to our agents and service providers for the purposes set out above.

10 WARRANTIES AND LIMITATION OF LIABILITY

- 10.1 Except as expressly set out in these terms and conditions, all conditions, warranties, terms and undertakings, express or implied, whether by statute, common law, trade practice, custom, course of dealing or otherwise (including without limitation about quality, performance or fitness or suitability for purpose) in respect of the Software and provision of the Service and Support Services are hereby excluded to the fullest extent permissible by law.
- 10.2 Nothing in these terms and conditions will exclude or restrict the liability of either party to the other for:
- 10.2.1 death or personal injury resulting from negligence;
 - 10.2.2 any fraud or fraudulent misrepresentation ;or
 - 10.2.3 any other liability to the extent that it may not be excluded or limited as a matter of law.
- 10.3 Subject to conditions 10.2, 10.4, 10.5 and 10.6 our liability to you for direct loss in contract, tort or otherwise arising out of or in connection with these terms and conditions or your use of the Software, the Support Services or the Service will be limited to 100% (one hundred per cent) of the fees paid by you in relation to the delivery of the relevant piece of your Mail under these terms and conditions.

- 10.4 Subject to condition 10.2, in no circumstances will we be liable to you whether in contract, tort, negligence, breach of statutory duty or otherwise in respect of:
- 10.4.1 loss of profits, income or revenue,
 - 10.4.2 Loss of goodwill,
 - 10.4.3 Loss of business opportunity or contracts,
 - 10.4.4 Business interruption,
 - 10.4.5 Loss of anticipated savings,
 - 10.4.6 Loss of information,
 - 10.4.7 loss of, damage to or corruption of data or cost of restoration of data for use of any results obtained by use of the Software, the Support Services or the Service; or
 - 10.4.8 any indirect, consequential, financial or economic loss or damage costs or expenses whatsoever or howsoever arising out of or in connection with these terms and conditions or your use of the Software, the Support Services or the Service.
- 10.5 If any of the limitations on our liability under these terms and conditions are adjudged to be unreasonable in the circumstances, then such limitation will be increased to the amount that we can recover from our insurer for the loss in question.
- 10.6 We will not be liable for any delay in or for failure to perform our obligations under these terms and conditions, including (but not limited to) your Mail or any part of it being lost, damaged, delayed or mis-delivered or not delivered at all as a result of:
- 10.6.1 circumstances beyond our reasonable control, including but not limited to acts of god including earthquakes, cyclones, storms, flooding, fire, disease, fog, snow or frost, force majeure including war, accidents, acts of public enemies, strikes, embargoes, perils of the air, local disputes, terrorism, riot or civil commotions, national or local disruptions in air or ground transportation networks and mechanical problems to modes of transport or machinery, impossibility of the use of public or private telecommunications networks, latent defects or inherent vice in the contents of the Mail or criminal acts of third parties such as theft or arson;
 - 10.6.2 you being in breach of your obligations under these terms and conditions; and/or
 - 10.6.3 your Mail consisting of anything prohibited by any law, rule or regulation; and/or
 - 10.6.4 any acts or inactions of Royal Mail

11 TERM AND TERMINATION

- 11.1 The Licence will commence at the time that you accept these terms and conditions and will continue until terminated in accordance with this condition 11.
- 11.2 We may suspend or terminate your Account, the Licence, and your agreement with us, immediately by written notice, if:
- 11.2.1 you breach these terms and conditions;
 - 11.2.2 you do not access your Account for a period of three months; or
 - 11.2.3 you are declared bankrupt or are unable to pay your debts when they fall due, or,
 - 11.2.4 where you have registered for the Service on behalf of your company and the company becomes insolvent, an interim order is made or a voluntary arrangement approved in respect of the company or a receiver or trustee is appointed or a voluntary arrangement is approved or a notice is served of intention to appoint an administrator or an administrator is appointed by court order or by any other means in respect of the company, or a receiver or administrative receiver is appointed over any of the company's assets or undertaking or a resolution or petition to wind up the company is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order; or

- 11.2.5 you cease, or threaten to cease, to trade; or
 - 11.2.6 there is a change of control of your company (as defined in [section 574 of the Capital Allowances Act 2001]); or
 - 11.2.7 you take or suffer any similar or analogous action in any jurisdiction in consequence of debt.
- 11.3 You may terminate your Account at any time by providing us with no less than one week's written notice.
- 11.4 In addition to any other rights we may have to terminate your Account, we may terminate your Account at any time upon giving you at least two weeks' written notice.
- 11.5 If we terminate your Account under condition 11.4 then after the date of termination, we will use the Registration Information to try to send you any funds that we are holding in your Account. If the Registration Information is not correct, and we are unable to complete the payment to you, or if you have not used your Account for a period of three months, your funds will be subject to applicable laws regarding unclaimed property.
- 11.6 Any termination of these terms and conditions will be without prejudice to any other rights or remedies either party may be entitled to under these terms and conditions or at law.
- 11.7 Within seven days of the termination of these terms and conditions (by either party for whatever reason) you will destroy all copies of the Software in your possession.

12 CONFIDENTIALITY

- 12.1 Each Party (the Receiving Party) shall keep the Confidential Information of the other Party ('Supplying Party') confidential and secret and shall not at any time after the date that you have accepted these terms and conditions:
- 12.1.1 divulge or communicate to any person, company, business entity or other organisation;
 - 12.1.2 use for its own purposes or for any purposes other than those of the Supplying Party or for performing their obligations under these terms and conditions; or
 - 12.1.3 through any failure to exercise due care and diligence, cause any unauthorised disclosure of any Confidential Information relating to the Supplying Party.
- 12.2 The obligations of this condition 12 shall not apply to any such information which:
- 12.2.1 was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
 - 12.2.2 becomes available to the public generally otherwise than through no fault of the Receiving Party;
 - 12.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
 - 12.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the confidential Information supplied by the Supplying Party;
 - 12.2.5 is required to be disclosed by order of a court of competent jurisdiction or other lawful government order, but only to the extent required by such order and subject to the Receiving Party giving the Supplying Party as much notice of the terms of the order as may be reasonably practicable;
 - 12.2.6 the parties agree in writing is not confidential or may be disclosed; or
 - 12.2.7 is trivial, obvious or useless.
- 12.3 This condition 12 shall survive termination of this Agreement for a period of 2 years.

13 GENERAL

- 13.1 Our failure or delay to exercise or enforce any right under these terms and conditions will not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter. No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with condition 13.7 below.
- 13.2 You may not transfer any rights or obligations you may have under these terms and conditions without our prior written consent. We reserve the right to transfer these terms and conditions or any right or obligation under these terms and conditions without your consent.
- 13.3 These terms and conditions constitute the entire understanding between the parties with respect to the subject matter and supersede and replace all prior negotiations and discussions between the parties relating to it. You confirm and acknowledge that you have not been induced to accept these terms and conditions by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in these terms and conditions purport to exclude liability for any fraudulent statement or act.
- 13.4 We have the right to revise and amend these terms and conditions from time to time. You will be subject to the terms and conditions in force at the time that you request the Services from us, unless any change to those terms and conditions is required to be made by law or governmental authority (in which case it will apply to requests previously made by you), or if we notify you in writing of the change to these terms and conditions before we send you confirmation of the fees deducted from you Account/ the Mail being posted/dispatched (in which case we have the right to assume that you have accepted the change to the terms and conditions, unless you notify us to the contrary within 2 days of receiving notification from us.
- 13.5 If any provision of these terms and conditions is held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be severed from these terms and conditions and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of these terms and conditions which will remain in full force and effect.
- 13.6 Applicable laws require that some of the information or communications we send to you should be in writing. When using our site, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on our site. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.
- 13.7 Any notice to be given under these terms and conditions will be in writing and delivered by hand, sent by first class post or sent by email or fax (such notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in these terms and conditions (or such other address as may have been notified). Any such notice or other document will be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by email or fax - at 9:00am on the next business day after the facsimile was dispatched.
- 13.8 The terms and conditions of use of our site, our privacy policy and copyright notices ('Other Provisions') shall be incorporated into these terms and conditions and shall be equally binding on you when you enter into a contract with us.
- 13.9 A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.10 These terms and conditions will be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English Courts.